
Chapter 21.52 – Coastal Development Review Procedures

Sections:

21.52.010	Purpose
21.52.015	Permit Required
21.52.025	Emergency Coastal Development Permits
21.52.035	Projects Exempt from Coastal Permit Requirements
21.52.045	Categorical Exclusions
21.52.055	Waiver for De Minimis Development

21.52.010 – Purpose

This chapter provides procedures to ensure that all public and private development in the Coastal Zone is consistent with the California Coastal Act of 1976 (Division 20 of the Public Resources Code) as amended, in accordance with the City's Local Coastal Land Use Plan and the City's Local Coastal Program. The provisions of this chapter shall apply in the Coastal Zone, as defined by the Coastal Act.

21.52.015 – Permit Required

- A. **Coastal Development Permit Required.** Any development in the Coastal Zone shall require a coastal development permit issued pursuant to Chapter 21.50 unless exempt or excluded. Development undertaken pursuant to a coastal development permit shall conform to the plans, specification, terms and conditions of the permit. The requirements for obtaining a coastal development permit shall be in addition to requirements to obtain any other permits or approvals required by other articles of this Ordinance, other city ordinances or codes or from any state, regional or local agency. If conflicts between this chapter and other city ordinances or codes arise, this chapter shall govern.
- B. **Projects Bisected By Coastal Zone.** Where a proposed project site is physically located both within and outside the Coastal Zone, the following procedures apply:
1. For divisions of land, a coastal development permit shall be required only for lots or parcels created that contain new lot lines or portions of new lot lines within the Coastal Zone and such review will be confined to those lots or portions of lots within the Coastal Zone.
 2. For any development involving a structure or similar integrated physical construction partially in the Coastal Zone, a coastal development permit shall be required.
 3. Pursuant to California Public Resources Code Section 30103 (b), the Coastal Commission may adjust the boundary of the Coastal Zone to avoid bisecting any single lot or parcel to conform it to readily identifiable natural or manmade features, as provided by Section 21.12.020 (Coastal Zone Permit and Appeal Jurisdiction Map boundaries).

- C. **Permit Jurisdiction.** After certification of the LCP, the City shall issue all coastal development permits for development not located within the Coastal Commission's original permit jurisdiction. The Coastal Commission's original permit jurisdiction includes all tidelands, submerged lands, or public trust lands whether filled or unfilled unless the Coastal Commission has delegated original permit jurisdiction to the City for areas potentially subject to the public trust but which are determined by the Coastal Commission to be filled, developed, and committed to urban use pursuant to Section 30613 of the Coastal Act. Development located in the Coastal Commission's original permit jurisdiction requires approval of a coastal development permit issued by the Coastal Commission in accordance with the procedure as specified by the California Coastal Act.
1. **Coastal Development Permit Issued by the Coastal Commission.** Developments on tidelands, submerged lands, or navigable waterways require a permit issued by the California Coastal Commission in accordance with the procedure as specified by the California Coastal Act. All development in areas where the Coastal Commission retains coastal development permit authority shall require conceptual approval from the City prior to application to the Coastal Commission. An approval in concept indicates that the proposed development conforms in concept to all City land use and development regulations, including any applicable discretionary actions, and therefore entitles the applicant to apply to the Coastal Commission for a coastal development permit.
 2. **Coastal Development Permit Issued by the City.** All development requires a coastal development permit unless specifically exempted or excluded. After certification of the LCP, the City shall issue all coastal development permits for development not located within the Coastal Commission's original permit jurisdiction.
- D. **Application Filing, Processing, and Review.** An application for a coastal development permit shall be filed and processed in compliance with Chapter 21.50 (Permit Application Filing and Processing). The application shall include all of the information and materials specified by the Director, together with the required fee in compliance with the City's fee schedule adopted by resolution. It is the responsibility of the applicant to provide evidence in support of the findings required by subsection (F) of this section (Findings and Decision).
- E. **Public Notice and Hearing Provisions.**
1. **Public Hearing Required.** A public hearing shall be required before the decision on any coastal development permit application.
 2. **Notice.** Notice of the hearing shall be provided and the hearing shall be conducted in compliance with Chapter 21.62 (Public Hearings).
- F. **Review Authority.** The review authority identified in Table 21.50-1 (Section 21.50.020) is designated to approve, conditionally approve, or deny applications for coastal development permits and the modification or revocation thereof, in compliance with the procedures provided in this section.

- G. **Findings and Decision.** The review authority may approve or conditionally approve a coastal development permit application, only after first finding that the proposed development is:
1. The project is in accord with the objectives of this Implementation Plan;
 2. The project conforms to all applicable sections of the certified Local Coastal Program;
 3. The project will not negatively impact public access to coastal resources.
 4. The project will not negatively impact public coastal views.
 5. The project will not negatively impact sensitive coastal resources and environmentally sensitive areas.
- H. **Conditions of Approval.** The review authority may impose such conditions in connection with the granting of a coastal development permit as deemed necessary to secure the purposes of this Implementation Plan and the certified Local Coastal Program and may require guarantees and evidence that such conditions are being or will be complied with.
- I. **Notice of Final Action.** Within seven (7) days of the date of the final local action on a coastal development permit, a notice shall be sent to the applicant, the Coastal Commission, and any persons who specifically request such notice by submitting a self-addressed, stamped envelope. Such notice shall be accompanied by a copy of the conditions of approval and written findings and the procedures for appeal of the action to the Coastal Commission.
- J. **Minor Changes by Director.**
1. Minor changes to an approved coastal development permit that do not involve an increase in structure area or height, an increase in the number of dwelling units, or a change of use may be approved by the Director in compliance with Section 21.54.070 (Changes to an approved project).
 2. Proposed changes that are not deemed minor shall be subject to review and approval by the original review authority.
- K. **Post-Decision Procedures.** The procedures and requirements in Chapter 21.54 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Part 6 of this title (Implementation Plan Administration) shall apply following the decision on a coastal development permit application.

21.52.025 – Emergency Coastal Development Permits

In the event of a verified emergency, temporary permits to proceed with remedial measures may be authorized by the Director until such time as a full coastal development permit shall be filed.

- A. **Application.** An emergency coastal development permit application shall be made to the Director in writing, or if, in the opinion of the Director, time does not allow written

application, the application may be made orally in person or by telephone or electronic mail within three (3) days of the emergency and shall include the following:

1. A description of the nature or cause of the emergency;
 2. The location of the protective or preventative work either needed or accomplished to respond to the emergency;
 3. An explanation of the circumstances of the emergency that justify the action to be taken, including the probable consequences of failing to take action.
- B. **Limitations.** The Director shall not grant an emergency coastal development permit for any development that falls within an area in which the Coastal Commission retains direct permit review authority. In such areas and for such developments, a request for an emergency authorization must be made to the Coastal Commission. In addition, a waiver for a coastal development emergency permit may be obtained from the Coastal Commission Executive Director for development that is required to protect life or public property in accordance with Section 30611 of the Coastal Act.
- C. **Application Review.** The Director is the review authority for emergency coastal development permits. The Director's determination to approve or deny the application shall be final. If the Director approves the application, the Director shall submit a report to the California Coastal Commission and the Planning Commission detailing the review and approval process.
- D. **Expiration.** An emergency coastal development permit is valid for sixty (60) days from the date of issuance by the Director. The Director may extend an emergency permit for an additional sixty (60) days for good cause including but not limited to that a coastal development permit application is on file.

21.52.035 – Projects Exempt from Coastal Permit Requirements

The following projects are exempt from the requirements of this chapter:

- A. **Pre-Certification.** Any development authorized by a coastal development permit approved by the Coastal Commission before effective date of certification of the Local Coastal Program.
- B. **Deferred Certification.** For developments in deferred certification areas, the Coastal Commission retains permit jurisdiction.
- C. **Coastal Act Exemptions.** Developments determined to be excluded from the coastal development permit requirements pursuant to California Public Resources Code Section 30610. The following types of projects shall be so excluded:
 1. **Existing Single-Unit Dwellings.** Improvements to existing single-unit dwellings, including all fixtures and other exterior structures directly attached to the dwelling; ancillary structures normally associated with single-unit dwellings, such as garages, swimming pools, fences, storage sheds; and landscaping, with the exception of the following classes of development that involve a risk of adverse environmental effects:

- a. Improvements to any structure where either the structure or the improvement is located on a beach, in a wetland or stream, seaward of the mean high tide line, within an environmentally sensitive habitat area, or in an area designated as highly scenic in the Certified Coastal Land Use Plan, or within fifty (50) feet of the edge of a coastal bluff.
 - b. Any significant alteration of land forms including removal or placement of vegetation on a beach, wetland, or sand dune, or within 50 feet of the edge of a coastal bluff or stream, or in an environmentally sensitive habitat area.
 - c. Expansion or construction of a water well or septic system.
 - d. Improvements on property that is located between the sea and first public road paralleling the sea, or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resources areas as designated by the Coastal Commission, when such improvements would constitute or result in any of the following:
 - (1) An increase of 10 percent or more within any 12-month period of the floor area of existing structure(s) on the building site or an additional improvement of 10 percent or less within any 12-month period where an improvement to the structure has previously been undertaken pursuant to California Public Resources Code Section 30610(a) and/or this subsection.
 - (2) The construction of an additional story or loft or increase in building height of more than 10 percent within any 12-month period.
 - (3) The construction, placement or establishment of any significant detached structure such as a garage, fence, shoreline protective works or docks.
 - e. In areas that the Coastal Commission has declared by resolution after a public hearing to have a critically short water supply that must be maintained for the protection of coastal resources or public recreational use, the construction of any specified major water using development not essential to residential use such as, but not limited to, swimming pools or the construction or extension of any landscaping irrigation system.
 - f. Any improvement where the coastal development permit issued for the original structure indicates that future additions would require a coastal development permit.
2. **Other Existing Structures.** Improvements to existing structures, other than single-unit dwellings and public works facilities, including all fixtures and other structures directly attached to the structure and landscaping, with the exception of the following classes of development that involve a risk of adverse environmental effect, adversely affect public access, or involve a change in use contrary to the Coastal Act:

- a. Improvements to any structure where either the structure or the improvement is located on a beach, in a wetland or stream, or seaward of the mean high tide line, in an area designated as highly scenic in the certified Coastal Land Use Plan, or within 50 feet of the edge of a coastal bluff.
- b. Any significant alteration of land forms including removal or placement of vegetation on a beach, wetland, or sand dune, or within 100 feet of the edge of a coastal bluff or stream, in an area designated as highly scenic in the Certified Coastal Land Use Plan, or in an environmentally sensitive habitat area.
- c. Expansion or construction of a water well or septic system.
- d. Improvements on property that is located between the sea and first public road paralleling the sea, or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resources areas as designated by the Coastal Commission, when such improvements would constitute or result in any of the following:
 - (1) An increase of 10 percent or more within any 12-month period of the floor area of existing structure(s) on the building site or an additional improvement of 10 percent or less within any 12-month period where an improvement to the structure has previously been undertaken pursuant to California Public Resources Code Section 30610(a) and/or this subsection.
 - (2) The construction of an additional story or loft or increase in building height of more than 10 percent within any 12-month period.
 - (3) The construction, placement or establishment of any significant detached structure such as a garage, fence, shoreline protective works or docks.
- e. In areas that the Coastal Commission has declared by resolution after a public hearing to have a critically short water supply that must be maintained for the protection of coastal resources or public recreational use, the construction of any specified major water using development not essential to residential use such as, but not limited to, swimming pools or the construction or extension of any landscaping irrigation system.
- f. Any improvement where the coastal development permit issued for the original structure indicates that future additions would require a coastal development permit.
- g. Any improvement to a structure that changes the intensity of use of the structure.
- h. Any improvement made pursuant to a conversion of an existing structure

from a multiple unit rental use or visitor-serving commercial use to a use involving a fee ownership or long-term leasehold including but not limited to a condominium conversion, stock cooperative conversion or motel/hotel timesharing conversion.

3. **Maintenance Dredging.** Maintenance dredging of existing navigation channels or moving dredged materials from those channels to a disposal area outside of the Coastal Zone, pursuant to a permit from the United States Army Corps of Engineers.
4. **Repair and Maintenance.** Repair or maintenance activities, with the exception of the following activities that involve a risk of adverse environmental effects:
 - a. Any method of repair or maintenance of a seawall revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline work that involves:
 - (1) Repair or maintenance involving substantial alteration of the foundation of the protective work including pilings and other surface or subsurface structures; or
 - (2) The placement, whether temporary or permanent, of rip rap, or artificial berms of sand, or any other form of solid material, on a beach or in coastal waters, streams, wetlands, estuaries, or on shoreline protective works; or
 - (3) The replacement of 20 percent or more within any 12-month period of the materials of an existing structure with materials of a different kind; or
 - (4) The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sand area or bluff or within 20 feet of coastal waters or streams.
 - b. Any method of routine maintenance dredging that involves:
 - (1) The dredging of 100,000 cubic yards or more within a 12 month period; or
 - (2) The placement of dredged spoils of any quantity within an environmentally sensitive habitat area, or any sand area, or within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams; or
 - (3) The removal, sale, or disposal of dredged spoils of any quantity that would be suitable for beach nourishment in an area the Coastal Commission has declared by resolution to have a critically short sand supply that must be maintained for protection of structures, coastal access or public recreational use.
 - c. Any repair or maintenance to facilities or structures or work located in an

environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area; or within 20 feet of any coastal waters and streams that include:

- (1) The placement or removal, whether temporary or permanent, of rip rap, rocks, sand or other beach materials or any other forms of solid materials;
- (2) The presence, whether temporary or permanent, of mechanized equipment or construction materials, except that the use of such equipment solely for routine beach cleaning and park maintenance shall not require a coastal development permit;

All repair and maintenance activities governed by subsection (D) (4) shall be subject to the permit regulations promulgated pursuant to the Coastal Act, including but not limited to the regulations governing administrative and emergency permits. The provisions of subsection (D)(4) shall not be applicable to those activities specifically in the document entitled Repair, Maintenance and Utility Hookups, adopted by the Commission on September 5, 1978 unless a proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean.

Unless destroyed by disaster, the replacement of 50 percent or more of a single-unit dwelling, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance under California Public Resources Code Section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit.

5. **Utility Connections.** The installation, testing and placement in service or the replacement of any necessary utility connection between an existing service facility and any development approved pursuant to the Coastal Act.
6. **Replacement of Structures Destroyed By Disaster.** The replacement of any structure, other than a public works facility, destroyed by a disaster, provided the following requirements are met:
 - a. The use of the replacement structure is the same as the destroyed structure;
 - b. The replacement structure does not exceed either floor area, height, or bulk of the destroyed structure by more than 10 percent; and
 - c. The replacement structure is sited in the same location on the affected property as the destroyed structure.
7. **Time-Share Conversions.** Any activity anywhere in the Coastal Zone that involves the conversion of any existing multiple-unit residential structure to a

time-share project, estate, or use, as defined in Section 11003.5 of the Business and Professions Code. If any improvement to an existing structure is otherwise exempt from the permit requirements of this division, no coastal development permit shall be required for that improvement on the basis that it is to be made in connection with any conversion exempt pursuant to this subsection. The division of a multiple-unit residential structure into condominiums, as defined in Section 783 of the Civil Code, shall not be considered a time-share project, estate, or use for purposes of this subsection.

D. Short-term Uses and Structures and Special Events. Short-term structures and uses and special events that meet all of the following criteria:

1. The event will not occur on and between Memorial Day weekend and Labor Day or if proposed in this period will be of less than one day in duration including set-up and take-down; and
2. The event will not occupy any portion of a public sandy beach or the location is remote with minimal demand for public use, and
3. There is no potential for adverse effect of sensitive coastal resources; and
4. A fee will not be charged for general public admission and/or seating where no fee is currently charged for use or event of the same area (not including booth or entry fees); or, if a fee is charged, it is for preferred seating only and more than 75% of the provided seating capacity is available free of charge for general public use; and
5. Does not involve permanent structures or structures that involve grading or landform alteration for installation.

E. De Minimis Development. Development determined to be de minimis by the Director pursuant to Section 21.52.085 (Waiver for De Minimis Development).

F. Ongoing Routine Repair and Maintenance. Pursuant to California Code of Regulations Section 13252 (c), the following on-going routine repair and maintenance activities conducted by the City:

1. **Beaches.** Periodic maintenance of public beaches landward of the mean high tide line and outside of dune habitat areas, including the cleaning and redistributing of sand using mechanized equipment.
2. **Storm Berms.** The use of temporary sand dunes in shoreline areas to protect buildings and infrastructure from wave uprush during storm events in a manner that minimizes significant impacts to coastal access and resources.
3. **Piers.**
 - a. The repair and maintenance of existing public recreational piers, including, but not limited to, resurfacing of pedestrian decks and the removal and replacement of existing pilings.

- b. The repair and maintenance of existing private piers involving construction totaling no more than twenty (20) percent of the total replacement value of the pier.
- 4. **Storm Drains.** Periodic inspection, cleaning, maintenance, and replacement of existing storm drain lines required under National Pollutant Discharge Elimination System (NPDES).

21.52.045 – Categorical Exclusions

- A. **Applicability.** Projects that will not result in a potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast are excluded from the requirements of coastal development permit processing as authorized by and in accordance with the procedures certified by the California Coastal Commission. Pursuant to Newport Beach Categorical Exclusion Order E-77-5 approved by the California Coastal Commission June 14, 1977, the following specific categories will not require a coastal development permit. A current record of all permits issued for categorically excluded developments shall be available for public and Coastal Commission review and shall contain the name of applicant, location (street address and assessor's parcel number of property on which development is proposed), and brief description of the development, date of application of other local permit(s), all terms and conditions of development imposed by the City in granting its approval, the site plan and vicinity map of the development.

Pursuant to California Code of Regulations Section 13243, any change to the categorical order requires action by the California Coastal Commission on the categorical exclusion. The categorical exclusion order cannot be modified through changes to the LCP alone. A request for amendment to a categorical exclusion order shall be processed pursuant to California Code of Regulations Sections 13241—13425.

- B. **Categorical Exclusion Order E-77-5.** The categorical exclusion is for the demolition and/or construction of single-unit and two-unit dwelling units and their appurtenant facilities in the R-1, R-BI, and R-2 Coastal Zoning Districts within the coastal zone.
 - 1. **Geographic Area.** The exclusion shall apply only to the following areas: Balboa Island, Balboa Peninsula, Cameo Highlands, Cameo Shores, Corona del Mar, Corona Highlands, Irvine Terrace, Lido Isle, Shorecliffs, Upper Newport Bay, and West Newport and depicted in the referenced map exhibits adopted in Part 8 of this title (Maps).
 - 2. **Exceptions.** Categorical Exclusion Order E-77-5 does not include:
 - a. The first row of lots adjacent to the beach, bay wetlands
 - b. Major undeveloped residential sites
 - c. Planned Community Districts
 - d. Gated communities

3. **Terms and Conditions.** The terms and conditions applied by the Coastal Commission to Categorical Exclusion Order E-77-5 are as follows:

- a. **Lot Coverage.** Structures subject to this exclusion shall be designed so that the gross structural area, including storage, parking, and stairways, does not exceed 1.5 times the buildable area on non-conforming lots (4,000 square feet or less) and in areas where a majority of the lots are non-conforming.
- b. **Parking.** A minimum of two parking spaces shall be provided for each residential unit, regardless of size. To the maximum extent practicable, parking shall be provided on the alley side of the lot and in no case shall required parking be permitted in the required front setback.
- c. **Density.** Duplexes shall only be permitted on lots 2,400 square feet or greater.
- d. **Applicable Zoning.** Development pursuant to this exclusion shall conform, unless otherwise limited by this order, to the zoning regulations in effect on the date this order is adopted by the Coastal Commission as represented by City of Newport Beach Ordinance No. 1657, a copy of which is attached to the official map of this exclusion and also provided in Appendix C of this Implementation Plan.
- e. **Implementation.** The City of Newport Beach shall, at an appropriate stage in the local approval process for development subject to this exclusion, distribute to the applicant for such local approval a form provided by the Executive Director of the Coastal Commission. After final local governmental approval but prior to construction under this exclusion, the City shall send the completed form to the Coastal Commission. The completed form shall include a certification by the applicant that the approved development conforms to the terms and conditions of this order.

The City of Newport Beach may, at its option, also make that certification on the completed form. No construction pursuant to this exclusion may commence until 5 working days have elapsed following receipt of the completed form by the Coastal Commission.

- f. **Public Trust.** In the event that any competent agency or court determines that any lands excluded by this order are subject to the public trust, this exclusion shall immediately become void as to those lands and any development undertaken on those lands shall be subject to the full permit requirements of the Coastal Act of 1976.

C. **Post-Certification Categorical Exclusions.** Any categorical exclusion adopted by the Coastal Commission after certification of this Implementation Plan pursuant to Sections 30610(e) or 30610.5 of the Public Resources Code and Subchapters 4 or 5 of Chapter 6 of Division 5.5 of Title 14 of the California Code of Regulations (Sections 13215-235 and 240-249). Records of such categorical exclusions shall be kept on file with the Department.

- D. **Notice of Exclusion.** A notice of exclusion shall be provided to the Coastal Commission and to any person who has requested such notice within five (5) working days of issuance. The notice of exclusion may be issued at the time of project application but shall not become effective until all other approvals and permits required for the project are obtained. A copy of all terms and conditions imposed by the City shall be provided to the Coastal Commission, per Section 13315 of the California Code of Regulations.

21.52.055 – Waiver for De Minimis Development

- A. **Authority.** The Director may issue a written waiver from the coastal development permit requirements of this Chapter for any development that is de minimis.
- B. **Determination of Applicability.** A proposed development is de minimis if the Director determines, based on a review of an application for a coastal development permit, that the development satisfies all of the following requirements:
1. The proposed development is not located within an appeal area or within an area where the Coastal Commission retains permit jurisdiction.
 2. The proposed development is consistent with the certified Local Coastal Program.